In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No. 78-1881

CARPENTERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA, *Appellant,*

vs.

CHRISTINE CAMPA, *Appellee,*
and
FERNANDO S. CAMPA, *Appellee,*
JOAN CLARE DURKIN, *Appellee,*
and
JAMES PATRICK DURKIN, *Appellee,*
CAROLYN J. BRYANT, *Appellee.*

On Appeal From
The Court of Appeal of the State of California
First Appellate District

MOTION TO AFFIRM

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the ruling of the State Appellate Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT

This is an appeal from a judgment of the Court of Appeal of the State of California, First Appellate District, in three cases:

IN RE THE MARRIAGE OF
CHRISTINE AND FERNANDO S. CAMPA

In 1975, Christine Campa petitioned for a dissolution of her twenty-one year marriage. A written Property Settlement Agreement entered into by the parties provided that Mrs. Campa would receive a settled portion of her husband's monthly retirement benefits from Carpenters Pension Trust Fund for Northern California. The Settlement Agreement was incorporated into the Final Judgment of Dissolution.

Mrs. Campa then obtained an Order from the Superior Court for the County of Santa Clara, State of California, setting aside the portion of the Judgment relating to retirement pay and ordering the Appellant, Carpenters Pension Trust Fund for Northern California to be joined as a party, pursuant to Section 4363 of the California Civil Code and Rule 1252 (a) of the California Rules of Court. Each party motioned for Summary Judgment, and the Trial Court denied Mrs. Campa's Summary Judgment Motion, and entered a Judgment dismissing the fund. The State Appellate Court reversed the decision of the Trial Court. Parenthetically, it should be noted that Appellant argues at pages 34-35 of its Jurisdictional Statement that "the participant (Fernando Campa) in Appellant's plan received a substantial share of the equity in the family residence in return for his agreement that his spouse could have a share in his prospective pension under his plan". This assertion is false. Fernando and Christine Campa were married for sixteen and one-fourth years, during which time Fernando accrued pension credits. Under the Property Agreement, Christine received 8⅛ credits of his retirement which in turn is computed into a percentage if and when Fernando retires. Christine receives *nothing* for waiving her interest in the family residence. It was done against the written advice of counsel and under physical and emotional distress inflicted by Fernando. Appellant need not be concerned that Fernando gave up anything.

In *In re marriage of Durkin* petitioner Joan Durkin petitioned for dissolution of her marriage to James Durkin. The Fund was joined as a party, and the trial court entered an interlocutory judgment of dissolution which included a provision ordering the appellant Fund to pay Mrs. Durkin a portion of her husband's pension when he received pension payments. The Appellate Court affirmed.

CAROLYN J. BRYANT v.
CARPENTERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA

Carolyn Bryant was divorced from her husband in 1973. In August, 1976, Mrs. Bryant filed a Complaint for Declaratory Relief, alleging that her former husband's pension had not been mentioned in the Judgment of Dissolution, and seeking a declaration of her one-half interest in the pension. The Trial Court found in favor of Mrs. Bryant, and ordered the Fund to pay Mrs. Bryant her share of the pension when her former husband begins to receive it. The Appellate Court affirmed.

ARGUMENT

The decision of the State Appellate Court is plainly correct. The Appellant's argument that the anti-assignment provisions of ERISA supercede community property laws of California is contradicted by the decisions of the Cali-

fornia Courts, lower Federal Courts, and the Departments of Labor and the Treasury.

The Department of Labor is charged with enforcement of ERISA as well as promulgation of regulations to ensure its effectuation. *See,* 29 U.S.C. 1001 *et seq.* Consequently, its position clearly stated in its *amicus curiae* brief filed in *Stone v. Stone* before the Ninth Circuit, if not determination of the pre-emption issue should at least be given careful consideration. The Labor Department's *amicus curiae* brief in *Stone v. Stone* before the Ninth Circuit Court of Appeals, No. 78-2313 fully supports the State Appeals Court decision herein. The Department of Labor's brief noted that the anti-assignment provision of ERISA found in 29 U.S.C. Section 1056 (d) was to include only non-voluntary alienations, such as garnishments. However, the legislative history of ERISA is silent as to the status of claims by spouses of participants. Looking to other federal statutes with similar anti-assignment clauses (*see*, 38 U.S.C., Section 3101 (Veterans Benefits); 5 U.S.C., Section 8346 (Civil Service Annuities)), courts have held that the clauses do not bar enforcement of family support decrees. The Labor Department brief stated:

> "In *In re Flanagan*, 31 F. Supp. 402 (D.D.C. 1940), the court construed a federal statute regulating the payment of veteran benefits which read in pertinent part,
>
> > 'Payments . . . shall not be liable to attachments, levy, or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the beneficiary.'
>
> Notwithstanding this seemingly broad provision, the court held that enforcement of family support decrees

was not within the ambit of the section, reasoning (31 F. Supp. at 403):

> '(T)he purposes of the exemption in this (case) were to protect not only the recipient of the benefits but to afford some degree of security to the family and dependents of such recipient. The enactment of these statutes had as their purpose, at least in part, to insure the public against the pauperism of the recipient of the benefits or that of his dependents.'

Schlaefer v. Schlaefer, 112 F.2d 117 (D.C. Cir. 1940) is to the same effect. There, Judge (later Justice) Rutledge considered whether a disabled person receiving benefits under the Life Insurance Act for the District of Columbia was 'relieve(d) . . . from (his) legally enforceable obligation to support his family and those legally dependent upon him' by an anti-assignment provision of that Act. The court declined, however, to 'classif(y)' the 'insured's legal dependents . . . with strangers holding claims hostile to his interest and theirs'; instead, the court reasoned (112 F.2d at 185):

> '(T)he usual purpose of exemptions is to relieve the person exempted from the pressure of claims hostile to his dependents' essential needs as well as his own personal ones, not to relieve him of familial obligations and destroy what may be the family's last and only security, short of public relief. The exemption, as contended for here, is not one which should be favored in legislation or in judicial construction. It can operate only in favor of a head of a family who appropriates to his exclusive sustenance or pleasure income received in times of adversity.'

Finally, three federal district courts have recently considered whether ERISA's anti-assignment provi-

sions bar the enforcement of family support decrees." *See, Cody v. Riecker*, No. 78 C 525 (E.D.N.Y., July 5, 1978); *Cartledge v. Miller*, No. 78 Civ. 1232 (S.D.N.Y., Sept. 5, 1978); *American Telephone and Telegraph Co. v. Merry*, No. B-78-161 (D. Conn., Oct. 2, 1978) *appeal pending*, No. 78-7484 (2d Cir.).

While the reasoning of the three opinions differs in some respects, they all hold, consistent with the position advanced by the Department of Justice on behalf of the Secretaries of Labor and the Treasury in the *Cartledge* and *Merry* cases, that there is an implied exception in the anti-assignment provisions for state court enforcement of family support decrees.

To be sure, these cases did not address the question of the status of decrees based on community property claims under the anti-assignment provisions. But we believe the policies that prompted three district courts to find an implied exception in the anti-assignment provisions of ERISA to uphold family support decrees are also applicable to the decree whose enforceability is at issue in this case. The purpose of the anti-assignment provisions was to protect 'employees and their beneficiaries.' The employee's ex-wife in the community property context is as deserving of such protection as an ex-wife in a common-law jurisdiction. As the district court properly observed (R 120-R 122);

> 'It would be ironic indeed if a provision designed in part to insure that an employee spouse would be able to meet his obligations to family after retirement were interpreted to permit him to evade them with impunity after divorce.'

In reaching this conclusion, the court balanced the relative equities of the employee and the non-employee, focusing on whether the interest of the non-employee spouse in a fair division of community property is

greater than the spouse's interest in keeping the pension benefits for himself (R 125). We agree with the district court that the equities here favor the non-employee spouse. In some cases, the employee spouse's pension provides the only means of support for the non-employee spouse; and in those cases where the community division affords more than the minimum necessary for the support of the non-employee spouse, the employee spouse by definition also has a reduced need for the pension. Moreover, the court below was of the view that the 'distinction between support and property obligations has collapsed' (R 124). Therefore, there is substantial policy support for the proposition that the implied exception for support obligations in ERISA's anti-assignment provisions should be expanded to encompass enforcement of community property divisions as well."

BNA Pension Reporter, No. 221, R-13.

Appellees stress their agreement with the Department of Labor in its argument that the equities clearly favor the non-employee spouse. In a significant number of marriages, the employee spouse's pension may be the major, or even only, substantial property of the marital community. The non-employee spouse's status as a dependent ends upon the termination of the marriage, but his or her need for financial help to which she is entitled as an owner under California law does not terminate upon dissolution of the marriage.

The Appellant herein has argued that the Department of Labor's position is inapplicable because none of the Appellee's pension rights are currently in pay status. This argument is untenable, since each of the Appellees will receive pension benefits only at such time as when the

employee-spouse begins receiving benefits; that is, when they are in pay status. This method of pension division has been expressly approved by the California Supreme Court in *In Re Marriage of Brown*, 15 Cal.3d 838, 848, 544 P.2d 561 (1976). This negates any risk that a non-employee spouse will receive benefits in cases where the employee-spouse never receives any part of the pension. Appellees agree that no other method of retirement division is compatible with ERISA.

The decision rendered recently by this Court in *Hisquierdo v. Hisquierdo,* 99 Sup.Ct. 802 (1979) does not affect the validity of the State Appellate Court herein. While the Railroad Retirement Act construed in *Hisquierdo* has an anti-assignment provision similar to that of ERISA, a definitional statute added in 1977, 45 U.S.C. (Supp. V) 231 (m), specifically excluded community property claims by a spouse against retirement benefits. This Court in *Hisquierdo* expressly noted that its decision was not applicable to pensions governed by ERISA. At footnote 24, the Court stated:

> "In this case, Congress has granted a separate spouse's benefit, and has terminated that benefit upon absolute divorce. Difference considerations might well apply where Congress has remained silent on the subject of benefits for spouses, particularly when the pension program is a private one which federal law merely regulates. *See,* Employee Retirement Income Security Act of 1974, 88 Stat. 829, 29 U.S.C. Section 1001, *et seq.* Our holding intimates no view concerning the application of community property principles to benefits payable under programs that possess these distinctive characteristics."

The same position was taken by the Department of Labor in its brief in *Stone v. Stone;* BNA Pension Reporter No. 221, R-13 (January 8, 1979). That the *Hisquierdo* decision could not be construed to affect future ERISA preemption cases is shown by the State Appellate Court in its denial of a rehearing of the present case. The Court cited the above-mentioned Footnote 24 and held that *Hisquierdo* does not affect cases arising under ERISA. 89 Cal.App.3d at 132.

Finally, the Appellees quote the compelling language of the State Appellate Court opinion which forcefully rejected Appellant's arguments regarding preemption at 89 Cal. App.3d 125-126:

> "The Fund points to ERISA's restrictions on assignment or alienation of pension benefits (29 U.S.C. Sections 206 (d)(1), 1056 (d)(1)) as evidence of Congress' concern that the pension benefits be preserved intact until an employee reaches retirement age. But dividing the benefits, once they are received, between an employee and his former spouse in no way clashes with this objective. It merely assures that the ex-wife partakes of the pension to the extent that it was earned as a result of the community effort. (*See, In re Marriage of Brown, supra,* 15 Cal. 3d at pp. 851-852, 126 Cal. Rptr. 633, 544 P.2d 561). *Her rights are those of an owner, not a creditor.* (*Phillipson v. Board of Administration, supra,* 3 Cal. 3d at p. 44, 89 Cal. Rptr. 61, 473 P.2d 765). (Emphasis added).

The same argument was made and rejected in *Stone v. Stone, supra.* We agree with what the court said there (450 F. Supp. at p. 926):

> 'The payment of benefits to a non-employee spouse in satisfaction of her community property claim does

not conflict with the purposes of Section 206 (d)(1). Members of the families of employees are included in the class which ERISA protects. The basic purpose of ERISA is to protect the literally millions of people who depend on benefits from private pension plans for financial independence after retirement. H. Rep. No. 93-533, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin. News, pp. 4639, 4640-4641; S. Rep. No. 93-127, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin. News, pp. 4838, 4839-4840. Congress was concerned not only about the workers themselves whose employment entitles them to benefits. Congress was also concerned about the families of those workers who depend to the same degree on the actual availability of those benefits. It would be ironic indeed if a provision designed in part to ensure that an employee spouse would be able to meet his obligations to family after retirement were interpreted to permit him to evade them with impunity after divorce. Construing Section 206 (d)(1) to prevent a nonemployee spouse from enforcing marital property obligations against an employee benefit plan covered by ERISA would frustrate rather than further the policies of that provision."

We respectfully submit, therefore, that the Appellant presents no substantial question for the decision of this Court, and that the decision of the State Appellate Court should be affirmed.

Dated: September 17, 1979

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